



STATE OF NORTH CAROLINA

BEFORE THE

COMMISSION

DISCIPLINARY HEARING

OF THE

WAKE COUNTY

North Carolina STATE BAR

13 DHC 3

THE NORTH CAROLINA STATE BAR,

PLAINTIFF

ANSWER

V.

ROBERT L. SCOTT, ATTORNEY,

DEFENDANT

Defendant, answering the Plaintiff, says in response to the following allegations as follows:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

Answer: Scott admits this allegation

2. Defendant, Robert L. Scott ("Scott" or "Defendant"), was admitted to the North Carolina State Bar on April 2, 2005, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Answer: Scott admits this allegation but makes one correction: he was admitted to the North Carolina Bar on April 4, 2005.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

Answer: Scott denies that he maintained a law office as aforesaid, but affirms he was employed by The O'Brien Law Firm from June 6, 2006 until August 30, 2010.

4. From on or about June 2006 through on or about August 2010, Defendant was affiliated with The O'Brien Law Firm Co., LPA ("The O'Brien Law Firm"), a business that offered real estate closing services in North Carolina but was located in Ohio. The O'Brien Law Firm, which was established and operated by Dennis O'Brien, an attorney licensed and operating out of the State of Ohio, was a closing agent for the U.S. Department of Housing and Urban Development (HUD) and operated in North Carolina from an office located at 101 South Elm Street, Suite 225, Greensboro, NC 27401.

Answer: Scott denies the precision of the allegation aforesaid, and affirms as follows: Scott was employed with The O'Brien Law Firm during the referenced time period; The Firm was at all times referenced herein a legally constituted Interstate Law firm properly registered in North Carolina as a foreign professional corporation, and, served as the closing agent for the United States Department of Housing and Urban Development (HUD), winning said agency pursuant to competitive bid against other North Carolina law firms in the sale of federally owned property; and, that Dennis O'Brien was, at all times referenced herein, the legally constituted president of that corporation, although he does not reside in the state of North Carolina nor is he a member of the North Carolina Bar.

5 Defendant was employed by The O'Brien Law Firm to serve as closing attorney for closings The O'Brien Law Firm handled in the State of North Carolina and was paid for those services by the O'Brien Law Firm.

Answer: Scott admits allegation 5.

6. On the Interstate Law Firm Original Registration Statement executed on September 24, 2007 and filed with the North Carolina State Bar, Defendant identified himself as a managing attorney for the O'Brien Law Firm. As a member of the North Carolina State Bar who signed the registration statement for The O'Brien Law Firm, Defendant was on notice that he and each attorney listed on the registration statement agreed to govern his or her personal and professional conduct With respect to legal matters arising in North Carolina in accordance with the Rules of Professional Conduct of the North Carolina State Bar.

Answer: Scott admits these allegations but recognizes that there is a dispute to exactly what those "legal matters" are to which he is alleged to be in violation of under the Rules of Professional Conduct of the North Carolina State Bar.

7. The policy and procedures of The O'Brien Law Firm largely dictated the Defendant's handling of real estate closings where Defendant represented the buyer in the transaction. Defendant did not have access to all funds entrusted to Defendant as the closing lawyer for the buyer. Specifically, Defendant did not have sufficient authority to timely reimburse buyers in closings he handled for closing errors which were discovered post-closing and required the reimbursement of funds.

Answer: Scott disputes the conclusions of the 7th allegation and demands strict proof of same. The assumptions which underlie these assertions are unfounded and depend upon a set of facts which in this instance do not apply.

8. When handling closings on behalf of The O'Brien Law Firm, Defendant relied on nonlawyer employees of The O'Brien Law Firm and other nonlawyers to perform title work, verify the taxes due, prepare the HUD-1 settlement statement, secure title insurance, pay the title insurance premium and conduct post-closing reviews. The policy and procedures of The O'Brien Law Firm dictated the activities of nonlawyer employees performing these functions. Defendant knew he did not have sufficient oversight to ensure the work nonlawyer employees performed was compatible with the professional obligations of Defendant.

Answer: Scott disputes the conclusions of the 7th allegation, demands strict proof of same, and affirms that the extent to which the nonlawyers participated in the closing process was permitted under North Carolina practice rules through the plaintiff's knowledge and agreement to the rules of participation in the purchase of federally owned property placed on sale by The United States Department of Housing and Urban Development.

9. In his association with The O'Brien Law Firm, Defendant was the closing attorney for Tammy C. McCrae-Coley ("McCrae-Coley") in the August 21, 2008 purchase by McCrae-Coley of property located at 728 Tucker St., Burlington, NC 27215 ("Tucker St. property").

Answer: While it is correct that Scott was the closing attorney for Ms. Coley, the closing was performed by a paralegal consistent with North Carolina Bar rules.

10. Defendant signed or authorized his signature to be placed on the HUD-1 settlement statement related to McCrae-Coley's purchase of the Tucker St. property. Above Defendant's signature on the HUD-1 settlement statement appears the following: "TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND

ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION."

Answer: Scott denies the accuracy of allegation 10.

11. The HUD-1 settlement statement for the McCrae-Coley closing on the Tucker St. property shows that a charge for title insurance in the amount of \$162.50 was paid from McCrae-Coley's funds at the settlement.

Answer: Scott admits the truth of allegation 11.

12. The HUD-1 settlement statement for the McCrae-Coley closing on the Tucker St. property also shows that city/town taxes in the amount of \$209.78 and county taxes in the amount of \$194.67 were charged to McCrae-Coley at the closing for her portion of the 2008 taxes.0

Answer: Scott admits the truth of allegation 12.

13. In April 2009, McCrae-Coley was notified by First Bank, High Point, NC, the financial institution that held the mortgage on the Tucker St. property, that the title insurance on the Tucker St. property had not been obtained by Defendant.

Answer: Scott lacks sufficient information or knowledge to form a belief as the accuracy of allegation 13 and demands strict proof of same.

14. After learning title insurance had not been obtained by Defendant, McCrae-Coley tried for a few weeks to contact Defendant by phone but did not get a response from Defendant. McCrae-Coley then took time off from her job and went to Defendant's office and waited for someone to assist her in her efforts to rectify Defendant's failure to secure title insurance on the Tucker St. property.

Answer: Scott denies the truth of allegation 14 and demands strict proof of same.

15. In ~~December~~ 2009, McCrae-Coley received a Notice of Attachment and Garnishment ("garnishment") from the Alamance County Tax Collector, which was also sent to her employer. The garnishment documents informed McCrae-Coley that for tax year 2008 a total of \$641.05 was owed on the Tucker St. property for taxes, interest and costs. When McCrae-Coley investigated the matter, she learned that the 2008 taxes had not all been paid on the Tucker St. property as indicated on the HUD-1 settlement statement.

Answer: Scott lacks sufficient information or knowledge to form a belief as the accuracy of allegation 13 and demands strict proof of same.

16. Because the Alamance County Tax Collector was going to garnish McCrae-Coley's salary for the delinquent taxes that should have been paid on the Tucker St. property according to the HUD-1 settlement statement, McCrae-Coley paid the delinquent taxes and then, on or about December 7, 2009, contacted Defendant's office.

McCrae-Coley spoke to an agent of Defendant and was told to fax the delinquent tax information to Defendant's office and that it would take 1-2 weeks for the matter to be resolved.

Answer: Scott lacks sufficient information or knowledge to form a belief as the accuracy of allegation 13 and demands strict proof of same.

17. On or about March 30, 2010, a check in the amount of \$546.82 was issued to McCrae-Coley to reimburse her for the delinquent taxes she had paid to stop the garnishment of her salary.

Answer: Scott admits that the plaintiff was reimbursed \$546.82 for unpaid taxes.

18. **Affirmative Defense**

I do not feel a disciplinary action against me is warranted. I have acknowledged that mistakes were made in the Coley Closing. But, they were systemic mistakes by a federal real estate closing program which involved other decision makers besides The O'Brien Law Firm.

Our Firm was an out of state law firm properly registered to perform a third party beneficiary contract with the Federal government for buyers of government owned residential properties. The mistakes of the kind experienced by the grievant were foreseeable by all the parties to this high volume sales program of federally owned homes which had been foreclosed upon under the FHA loan program. There were safeguards put in place by the federal contract intended to insure that a buyer's interest would be protected; the government had established a management firm which had sign off authority on all closings to insure fiscal integrity. There was the third party on the HUD statement in this closing. I am not aware of any buyer whose interests were compromised by our actions who were not eventually made whole. Under that system, the overwhelming majority of closings proceeded without major problems.

O'Brien's contract was with the U.S. Department of Housing and Urban Development (HUD) to perform high volume closings. After my initial hiring as a closing attorney, I became fully aware of the possible dangers and liabilities of this type of operation which placed heavy responsibilities on its managing attorney. I made the principals aware of these risks as well as the NC Bar during my tenure at O'Brien and then obtained the best legal advice I could find and worked constructively to train and supervise our paralegals to perform their responsibilities consistent with the Bar rules.

When the Coley matter arose in the context of a previous grievance from the State Employees Credit Union, I consulted with the head of the property law section of The Bar who suggested I contact Alice Mine. Alice Mine's correspondence back to me cautioned me but left the decision whether to continue as O'Brien's attorney to my discretion when I informed her of my concerns.

Thereafter my path led me to Dean Leary Davis of Elon University Law School whom I consulted on the issue of controlling out of state law firms. The path Dean Davis charted for me led me to Attorney Schneider and then to Attorney Deanna Brocker, two distinguished firms specializing in professional responsibility issues.

After all of my research and investigation, I sincerely believed that a new closing template was possible in our case. So, I voluntarily accepted admonishment on the earlier State Employees complaint involving a delay in obtaining a title policy for closings which occurred in January and June of 2008. I did so without hearing with a commitment to the State Bar's own Attorney Fern to implement new legal safeguards that would govern this high volume government program.

When I accepted responsibility for these earlier transgressions by voluntarily signing the admonition, I did so on the expressed understanding that I would work to improve operations; and, that if that were not possible, I would resign. I fully understood that the admonishment could be used as evidence in any subsequent transgressions of a similar variety. I was of the opinion though, that while it could be used as an evidentiary baseline against future occurrences, my continued employment at O'Brien presented only a minimal risk since I would still have an opportunity to employ more effective oversight procedures to minimize their occurrence.

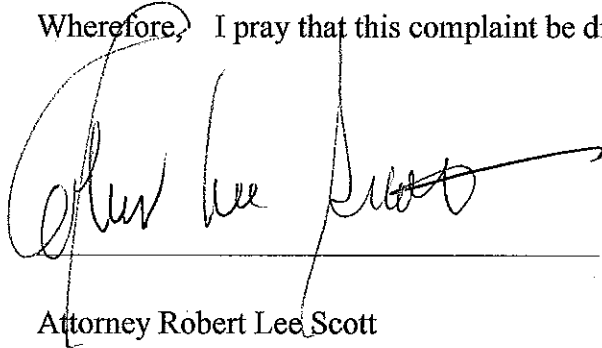
Therefore, the Coley grievance should not be considered a subsequent transgression since it occurred before my acceptance of Admonishment which occurred in 2009. It should not be evidence of the repetition of the transgressions referenced in the initial admonishment since the actions complained of by Coley were part of systemic shortcomings occurring contemporaneously with those highlighted in the previous admonishment. The truth is that there were no further grievances of this type reported after my initial admonishment through my departure from the Firm in August of 2010. I believe this is the direct result of the vigorous oversight procedures I employed after receiving the initial admonition.

It is my position that closings by the federal government should be governed by a different template than that which governs traditional North Carolina closings. Our closings involved HUD's management agent which worked on the fiscal matters such as real estate taxes. The O'Brien Law Firm was not a "nominal closing agent", as was alleged in the censure motion tendered to me by the Committee, organized to prey on unsuspecting buyers without adequate legal oversight for a quick profit.

After accepting the Bar's offer of admonishment in the credit union matter, the first I received in almost 40 years of practice, I made radical changes in my methods and employed more effective systems to train, monitor, and supervise our staff until the time of my departure in August of 2010. No further grievances were sustained.

It is my belief that if the earlier admonition is uncoupled as evidence in the present complaint and the latter is evaluated on its own terms I will be exonerated.

Wherefore, I pray that this complaint be dismissed.

 2/11/13

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